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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/929,836	09/15/1997	RUSSELL DONOVAN ARTERBURN	6971	2308

7590 07/30/2004

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EXAMINER

HOFFMANN, JOHN M

ART UNIT	PAPER NUMBER
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1731

DATE MAILED: 07/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	<b>Application No.</b> 08/929,836	<b>Applicant(s)</b> ARTERBURN, RUSSELL DONOVAN	
	<b>Examiner</b> John Hoffmann	<b>Art Unit</b> 1731	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 14 July 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

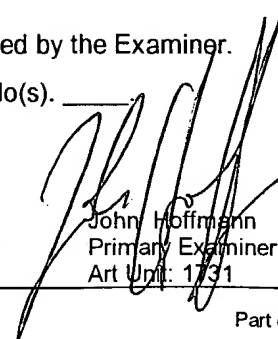
Claim(s) allowed: 1, 3 and 5-7.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 2, 4, 8-24.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☐ Other: \_\_\_\_\_

  
 John Hoffmann  
 Primary Examiner  
 Art Unit: 1731

7-28-04

Continuation of 2. NOTE: The new issue is whether the amendment is proper. It is noted that claim 21 is designated as "Previously Presented" however, line 3 has an "a" which is deleted. The new issue is whether there are other improper changes in the amendment..

Continuation of 5. does NOT place the application in condition for allowance because: 1) The amendment is not entered and 2) the arguments were not convincing. As to the portions rejection - it is largely irrelevant that the Board did not state the portions were indefinite - the rejection is based on the arguments contained in the rejection. There is no indication that the Board considered whether or not the language was definite - The Board was under no requirement to determine whether that particular language was indefinite. Nothing can be ascertained from the Decision on Appeal as to whether the Board would hold the terms indefinite. Since Applicant did not clearly point out any error in the rejection, it is deemed that Applicant agrees with the arguments in the rejection. As to the argument that Examiner believes the Board agrees with the present rejection: Examiner had no intention of suggesting such and apologizes if that impression was given. Examiner's reference to the Decision on Appeal was merely to point out how/why Examiner is unable to tell what is meant by the claims and thus why the present rejection is made..